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COOPERATIVE SERVING PERSONS TO WHOM CENTRAL STATION SERVICE IS AVAILABLE

Standing of Competitor to Enjoin Cooperative from Serving Persons Receiving Central Station Service

In a recent Wisconsin case a public utility sought to enjoin an REA cooperative, St. Croix County Electric Cooperative (Wisconsin 51 St. Croix), from serving two persons who had been former customers of the power company. Although the persons in question had discontinued service from the power company several years prior to institution of the present action, the power company argued that it had always kept its service available to the customers and, this being the case, that the cooperative was prohibited from rendering service under the terms of the Rural Electrification Act of 1936. The defendant demurred and the demurrer was sustained. Wisconsin Hydro Electric Co. v. St. Croix County Electric Cooperative, in the Circuit Court for St. Croix County, March 30, 1940.

In its opinion the court considered sections two and four of the Rural Electrification Act, in which the Administrator is authorized to make loans for "the furnishing of electric energy to persons in rural areas who are not receiving central station service." After pointing out that there was no allegation that the borrower had received its loan subject to any conditions pertinent to this dispute in the expenditure of the funds borrowed, the court said: "The restriction 'who are not receiving central station service' appears to be a restriction of the Administrator in making loans and not a restriction of the borrower in the use of money." This was in accord with defendant's contention that since the provisions in question were directed solely to the Administrator and not to borrowers, the plaintiff suing as a competitor had no legal standing to raise any question as to a possible violation of the REA Act under Alabama Power Co. v. Ickes, 302 U.S. 464 (1938) and Duke Power Co. & Greenwood County, et al. v. Tennessee Valley Authority, 302 U.S. 485, (1938).

The court then went on to hold that even if the REA Act could be construed to apply to borrowers so as to impose a direct duty upon them, nevertheless in the present case there had been no violation of the Act by St. Croix County Electric Cooperative. It was important, the court said, to note that the REA Act spoke in terms of persons receiving central station service, not in terms of persons to whom central station service was available. "Availability", the court held, "does not satisfy the requirements of this statutory restriction. To receive service is obviously quite different from a mere availability of service."

The only other case in which the foregoing questions have been litigated is Missouri Power & Light Co. v. Lewis County Rural Electric Cooperative Association (February 12, 1940). This case was in the circuit court of Marion County, Missouri, and a result similar to that of the Wisconsin case was reached, i.e., the demurrer of the cooperative was sustained.

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Municipal Corporations - Bonds - Nature of Refunding Bonds

In an attack on the validity of an issue of refunding bonds to be issued by a municipality it was urged against the validity of the bonds that they had not been approved by the electorate as required by statute. Held, approval unnecessary. State v. West Palm Beach, 193 So. 839 (Fla. 1940).

The court states: "Refunding bonds that merely contain the obligation of the original bonds for reduced or extended payments are not required by law to be approved by the electorate. Such approval if given does not afford additional legal effect to the refunding bonds or to the authority for issuing them."

Municipal Corporations - Constitutionality of Ordinance Relating to Tree Trimming

City ordinance provided that city officers may employ city employees to trim trees along telephone and electric power lines and charge the cost thereof to the utilities owning the lines. Plaintiff seeks to enjoin the city from trimming the trees alleging that the ordinance is unconstitutional. Held, injunction denied and ordinance held constitutional. Erny v. St. Paul, 290 N. W. 247 (Minn. 1940).

The court states: "We think the ordinance authorizing the activity was well within the welfare clause and the city was justified under that clause in protecting the trees along its streets and boulevards and in protecting its citizens by this ordinance from the hazards involved both in the extension of the wires through the branches of the trees and in the operation of trimming. It might well take the matter into its own hands and control, and charge the expense thereof to the utilities rather than to risk proper measures being taken by the utilities under its supervision."

Chattel Mortgages - Conflict of Laws

A executed a chattel mortgage of an automobile which mortgage was validly recorded in Missouri. Subsequently, the automobile was brought to Louisiana without the knowledge or consent of the mortgagee. The case now involves a controversy between an innocent purchaser in Louisiana and the mortgagee. The lower court rendered judgment for the purchaser. See 192 So. 248 (1939) discussed in 2 REA L.J. 10 (1940). Held, reversed. General Motors Acceptance Corp. v. Nuss, La. Sup. Ct. April 29, 1940, C.C.H. Cond. Sale Chattel Mtge. Serv. para. 10,771.

The court adopts the view that the Louisiana recording statutes do not apply to personalty encumbered by lien and brought into the state without the consent of the lienor.

Municipal Corporations - Procedure for the Acquisition of a Municipal Electric Plant

Proceeding under Chapter 185 of the Mississippi Laws of 1936, the town passed the necessary resolutions and ordered an election for the approval of the issuance of bonds to obtain funds to acquire a municipal electric plant. In accordance with Mississippi procedure, the town initiated proceedings before the Chancellor for the validation of the bonds. The Mississippi Power and Light Company appeared and filed objections to the issuance of the bonds. The Chancery Court overruled the objections and validated the bond issues. Held, affirmed. Miss. Power & Light Co. v. Batesville, 193 So. 814 (Miss. 1940).

Section 4 of Chapter 185 of the Laws of 1936 provides that the election resolution shall be published "in a newspaper

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published and circulating in the municipality, or, if there be no such newspaper, then...in a newspaper circulating in the municipality, and shall also be posted...in five public places in the municipality." The town published the notice in a newspaper both published and circulating in the municipality. It did not post notices in the five public places. The court holds that the latter posting is only necessary if there is no newspaper published and circulating within the municipality.

The objector urges that the resolution was vague because it is stated that the funds were to be used "to acquire an electric plant," which was to be acquired "by construction or purchase, or both." The power company urged that the municipality must set forth in the notice the method by which it intended to acquire the plant. The court points out that the following portions of the act help to sustain the proposition that there was no need for the notice to set forth the method by which the municipality would acquire the plant:

"In subdivision (e) of section 2 of the act here involved, we find this definition: 'The term "acquire" shall mean to purchase, to lease, to construct, to reconstruct, to replace, or to acquire by gift, or exercise of the right of eminent domain.'

"Further, in subdivision (a) of section 3 of said act, it is said that authority is given, 'To acquire, improve, operate and maintain,' an electric light plant. And section 24 thereof declares that: 'This act is for the public purpose of promoting the increased use of electricity in the urban and rural areas of this state, and to enable all counties, as well as cities and towns, to secure the benefit of the surplus power generated or to be generated by the Tennessee Valley Authority at Wilson Dam in the State of Alabama and Norris Dam in the State of Tennessee, or the power generated at any other works or dams. This act is remedial in nature and the powers hereby granted shall be liberally construed to effectuate the purposes hereof, and to this end every municipality shall have power to do all things necessary or convenient to carry out the purposes hereof in addition to the powers expressly conferred in this act."

"In our opinion, it would defeat the purpose of this act if we were to hold that the governing authorities of a municipality or county would be required to say whether or not they would purchase an electric plant already constructed or construct one of their own. The manifest purpose of the act was to give the governing authorities the power to do that which is determined to be best; and we think this is fully demonstrated by the use of the word 'acquire' in the act, as well as the definition thereof. We think the resolution here fully expresses the purposes of the governing body of the town of Batesville, under the terms of the act. Nothing more was required."

Acknowledgments - What Interest Disqualifies

It was urged against the validity of a mortgage by A to B that the acknowledgment was invalid. The defect alleged in the acknowledgment was that the notary public who took the acknowledgment was a stockholder and a cashier of the bank which received part of the proceeds of the indebtedness because the mortgagor was indebted to the bank. Held, the notary public was not disqualified. Federal Farm Mortgage Corp. v. Fischer, 290 N. W. 444 (Neb. 1940).

The problem here outlined involved a distinction between two Nebraska cases. In Quesner v. Novotony, 116 Neb. 84, 215 N. W. 796 (1927) it was held that a notary public who was also a stockholder and officer of the corporation was not disqualified from taking the acknowledgment to a mortgage merely because a part of the proceeds thereof were to be used to pay an indebtedness owing to the corporation. In another case, Wilson v. Griess, 64 Neb. 792, 90 N. W. 866 (1902) the X bank which held a note from the Y bank for collection took a mortgage on the debtor's homestead and named the Y bank as mortgagee. However, the mortgage included some indebtedness owed by the debtor to the X bank. It was there held that the X bank had a beneficial interest in the mortgage itself and therefore one of its stockholders and officers was disqualified from taking the acknowledgment as notary public. The court holds that the Quesner case is controlling here since the bank of which the notary public was a stockholder had no legal or equitable interest in the mortgage, whereas in the Wilson case the bank in question had an equitable interest in the mortgage.